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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/678,987	10/02/2003	Jeffrey C. Herold	033905-000024	1550

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EXAMINER	
PHAN, HAU VAN	

ART UNIT	PAPER NUMBER
3618	

DATE MAILED: 08/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/678,987	HEROLD, JEFFREY C.	
	Examiner	Art Unit	
	Hau V Phan	3618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 August 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *9-30* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *9-30* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Acknowledgment

1. The amendment filed on 7/21/2005 has been entered.

2. The request for continues examination filed on 7/15/2005 has been considered.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 9-18 are alternatively rejected under 35 U.S.C. 102(b) as being anticipated by Williams (1,031,033).

Williams in figures 1-3, discloses a travel bag for enclosing, protecting and transporting contents placed therein and for collapsing to a storage position when contents are not placed therein. The travel bag comprises a flexible enclosure or soft side garment bag (6) and a rigid support member (7). The rigid support member has a main portion, a bottom portion, and side portions (as shown in figure 3). The main portion has a lower portion, which is externally supported a back lower portion. The bottom portion joined the main and side portions for form a partially enclosed concave part into which a portion of the flexible enclosure is fitted and affixed. Wherein the top can be collapsed into the partially enclosed cavity. The flexible enclosure or soft side

garment bag formed of a strong material arranged as an enclosure having a top, sides and bottom portion. Williams also discloses the flexible enclosure, which is made of deformable material such as fabric with their flexibility allows them to fit in the small and elevated storage spaces. Therefore, the sides of the flexible enclosure or the garment bag should be flexible so that when the bag does not contain contents, the enclosure can be collapsed to a storage position. The main portion of the rigid support member extends from the bottom of the enclosure along a portion of the side and terminates near the middle of the enclosure (figure 3). The rigid support member also formed of a single piece rugged material.

Regarding claim 10, Williams discloses the flexible enclosure, which is fitted and affixed to the enclosed concave part of the rigid support member. Therefore, when the flexible enclosure is in the storage position, part of the flexible enclosure will occupy the concave part of the rigid support member.

Regarding claim 11, Williams discloses the rigid support member, which is extended from the bottom portion of the enclosure along a portion of the back of the enclosure and along a portion of the sides of the enclosure (figure 1).

Regarding claim 12, Williams discloses the rigid support member, which is extended from the bottom portion of the enclosure along a portion of the back of the enclosure and terminates near the middle of the enclosure (figure 3).

Regarding claim 13, Williams discloses the main portion of the rigid support member, which is located on the back portion of the enclosure and extends between the bottom portion and the middle of the enclosure (figure 3).

Regarding claim 15, Williams discloses the rigid support member, which is formed by the main portion in a vertical direction and the bottom portion in a horizontal direction. Therefore, the shape of the rigid support member is substantially similar to a quadrant of the flexible enclosure.

Regarding claims 17-18, Schmidt discloses the flexible enclosure, which is formed of a material from the group of deformable material, which can be folded and the rigid support member, which is formed of plastic or the like that could be a metallic material.

5. Claims 9-21 and 23-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Schmidt (5,277,449).

Schmidt. in figures 1-4, discloses a travel bag for enclosing, protecting and transporting contents placed therein and for collapsing to a storage position when contents are not placed therein. The travel bag comprises a flexible enclosure or soft side garment bag (50) and a rigid support member (as shown in figure 1). The rigid support member has a main portion (2), a bottom portion, and side portions (as shown in figure 1). The main portion has a lower portion, which is externally supported a back lower portion. The bottom portion joined the main and side portions for form a partially enclosed concave part into which a portion of the flexible enclosure is fitted and affixed. Wherein the top can be collapsed into the partially enclosed cavity. The flexible enclosure or soft side garment bag formed of a strong material arranged as an enclosure having a top (54), sides (52) and bottom portion (53). Schmidt also discloses the flexible enclosure, which is made of deformable material such as fabric with their

flexibility allows them to fit in the small and elevated storage spaces. Therefore, the sides of the flexible enclosure or the garment bag should be flexible so that when the bag does not contain contents, the enclosure can be collapsed to a storage position. The main portion of the rigid support member extends from the bottom of the enclosure along a portion of the side and terminates near the middle of the enclosure (figure 4). The rigid support member also formed of a single piece rugged material.

Regarding claim 10, Schmidt discloses the flexible enclosure, which is fitted and affixed to the enclosed concave part of the rigid support member. Therefore, when the flexible enclosure is in the storage position, part of the flexible enclosure will occupy the concave part of the rigid support member.

Regarding claim 11, Schmidt discloses the rigid support member, which is extended from the bottom portion of the enclosure along a portion of the back of the enclosure and along a portion of the sides of the enclosure (figure 1).

Regarding claim 12, Schmidt discloses the rigid support member, which is extended from the bottom portion of the enclosure along a portion of the back of the enclosure and terminates near the middle of the enclosure (figure 3).

Regarding claim 13, Schmidt discloses the main portion of the rigid support member, which is located on the back portion of the enclosure and extends between the bottom portion and the middle of the enclosure (figure 3).

Regarding claim 15, Schmidt discloses the rigid support member, which is formed by the main portion in a vertical direction and the bottom portion in a horizontal

direction. Therefore, the shape of the rigid support member is substantially similar to a quadrant of the flexible enclosure.

Regarding claims 17-18, Schmidt discloses the flexible enclosure, which is formed of a material from the group of deformable material, which can be folded (col. 4, lines 54-67) and the rigid support member, which is formed of plastic or the like (col. 2, lines 42-54) that could be a metallic material.

Regarding claim 19, Schmidt discloses the rigid support member having wheel wells (as shown in figure 3). The wheel wells arranged on a curved joint between the main portion and the bottom portion operable to receive therein wheels (10) and wheel mounting hardware (10a).

Regarding claim 20, Schmidt discloses the rigid support member having reinforcement ribs (9). The reinforcement ribs formed on the rigid member main portion in longitudinal or lateral directions.

Regarding claim 21, Schmidt discloses the flexible enclosure having two corners and the rigid support member has two corners. The corners of the flexible enclosure being matingly received and affixed into the corners of the rigid support member.

Regarding claim 23, Schmidt discloses the rigid support member, which is jointed by the main portion and the bottom portion to have a convex side and a concave side. The flexible enclosure affixed to the concave side of the rigid support member. The wheel wells affixed to the convex side of the rigid support member at the curved joint (figure 4).

Regarding claim 25, Schmidt discloses the rigid support member, which formed by the main portion, the bottom portion and the side portions to have a single closed loop periphery.

Regarding claim 26, Schmidt discloses the flexible enclosure sides, which is formed of a single piece, and wrapped in a rectangular body to form a substantially elongate element except for a cylindrical body. It would have been an obvious matter of design choice to have the flexible enclosure in a cylindrical body or whatever relative shape were desired, since such a modification would have involved a mere change in the proportions of components. A change in proportion is generally recognized as being within the level of ordinary skill in the art. *In re Reese,* 129 USPQ 402.

Regarding claim 27, Schmidt discloses the main portion of the rigid support member, which is located on the back portion of the enclosure and extends between the bottom portion and the middle of the enclosure (figure 3).

Regarding claim 28, Schmidt discloses the rigid support member, which is jointed by the main portion and the bottom portion to have a concave side to cooperate in form with the flexible enclosure member (figures 3-4).

Regarding claim 29, Schmidt discloses the rigid support member having corners integrated with the entire rigid member as a single piece of formed material whereby the corner cannot be separated from the bag (figure 3).

Regarding claim 30, Schmidt discloses the rigid support member, which formed by the main portion, the bottom portion and the side portions to have a single closed loop periphery. The flexible enclosure member is affixed to the rigid member such that

it may pushed through the closed loop periphery and into the partially enclosed cavity formed by the rigid member (figure 3. Notice, the term "may be" is not true limitation).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schmidt (5,277,449) as applied to claim 21 above, and in view of Rekuc et al. (5,743,363).

Schmidt discloses the flexible enclosure, which is affixed to the rigid support member, but fail to show the flexible enclosure mounted to the rigid support member by rivets.

Rekuc et al. in figures 1 and 4, teach a scuff resistant bag comprising a rigid support member (16) and a flexible enclosure (10). The rigid support member has bores (27) to accommodate bolts or rivets (22) for holding the flexible enclosure in place. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the travel bag of Schmidt with the scuff resistant bag having the flexible enclosure affixed to the rigid support member by rivets as taught by Rekuc et al. in order to hold the flexible enclosure in place.

Response to Arguments

8. Applicant's arguments with respect to claims 9-30 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hau V Phan whose telephone number is 703-308-2084. The examiner can normally be reached on 7:30AM-4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christ Ellis can be reached on 703-308-2560. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hau V Phan
Primary Examiner
Art Unit 3618

Hau Phan
8/19/05